

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

UNITED STATES OF AMERICA)	
)	
v.)	1:12-cr-146
)	<i>Mattice / Lee</i>
JAMES A. BURKE,)	
)	

ORDER

Magistrate Judge Susan K. Lee filed a report and recommendation recommending the Court:

(1) grant Defendant's motion to withdraw his not guilty plea to Count One of the two count Indictment (2) accept Defendant's plea of guilty to the lesser offense of the charge in Count One of the Indictment, that is of conspiracy to distribute and to possess with the intent to distribute 28 grams or more of a mixture and substance containing a detectable amount of cocaine base ("crack"), in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(B); (3) adjudicate Defendant guilty of the lesser offense of the charge in Count One of the Indictment, that is of conspiracy to distribute and to possess with the intent to distribute 28 grams or more of a mixture and substance containing a detectable amount of cocaine base ("crack"), in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(B) ; (4) defer a decision on whether to accept the plea agreement until sentencing; and (5) find defendant shall remain in custody until sentencing in this matter [Doc. 54]. Neither party filed a timely objection to the report and recommendation. After reviewing the record, the Court agrees with the magistrate judge's report and recommendation. Accordingly, the Court **ACCEPTS** and **ADOPTS** the magistrate judge's report and recommendation [Doc. 54] pursuant to 28 U.S.C. § 636(b)(1) and **ORDERS** as follows:

(1) Defendant's motion to withdraw his not guilty plea to Count One of the Indictment

is **GRANTED**;

- (2) Defendant's plea of guilty to the lesser offense of the charge in Count One of the Indictment, that is of conspiracy to distribute and to possess with the intent to distribute 28 grams or more of a mixture and substance containing a detectable amount of cocaine base ("crack"), in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(B) is **ACCEPTED**;
- (3) Defendant is hereby **ADJUDGED** guilty of the lesser offense of the charge in Count One of the Indictment, that is of conspiracy to distribute and to possess with the intent to distribute 28 grams or more of a mixture and substance containing a detectable amount of cocaine base ("crack"), in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(B);
- (4) A decision on whether to accept the plea agreement is **DEFERRED** until sentencing; and
- (5) Defendant **SHALL REMAIN** in custody until sentencing in this matter which is scheduled to take place on **Monday, October 28, 2013 at 2:00 p.m.** before the Honorable Harry S. Mattice, Jr.

SO ORDERED.

ENTER:

/s/Harry S. Mattice, Jr.
HARRY S. MATTICE, JR.
UNITED STATES DISTRICT JUDGE